

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos.6712/98 to 6716/98

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA and

MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
STATE OF GUJARAT

Versus

KOLI PREMJI PUNJA

-----  
Appearance:

MR PV BHATT, learned Asstt. Govt. Pleader for the appellants

-----  
CORAM : MR.JUSTICE M.R.CALLA and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/05/99

COMMON JUDGEMENT

This batch of five First Appeals is filed by the State against the common judgment and order dated 16th March, 1998 passed by the learned Extra Assistant Judge,

Jamnagar in Land Reference Cases Nos.480/83 to 484/83. As there are identical facts involving common question of law, we decide all these five First Appeals by this common judgment and order.

2. All these lands were acquired for the Dai-Minsar Irrigation Scheme by a notification under Sec.4 of the Land Acquisition Act (hereinafter referred to as 'the Act') on 18-12-1980. Thereafter, a notification under Sec.6 was issued on 23-12-1981. A corrigendum was issued on 26-12-1981 which was published in the Govt. gazette on 24-12-1981 and notification under Sec.9 of the Act was also issued. The Land Acquisition Officer passed the award on 22-3-1982 granting compensation at the rate of Rs.110/- per Are for the irrigated land and Rs.90/- per Are for non-irrigated land. Being dissatisfied with the said award, these claimants moved references under Sec.18 of the Act and the Reference Court has passed the impugned common order dated 16-3-1998 granting additional compensation at the rate of Rs.77.50 per Are for the irrigated lands and Rs.35/- per Are for the non-irrigated lands with solatium at the rate of 15% and interest on solatium at the rate of 4.5% per annum on the additional amount.

3. These lands are owned by the claimants. The claimants have raised the claim for compensation at the rate of Rs.40,000/- for the lands acquired by the respondent. The Special Land Acquisition Officer has awarded compensation for the lands at the rate of Rs.110/- and Rs.90/- per Are only. It is contended by the claimants that the price prevailing in the market on the date of publication of the notification under Sec.4 of the Act was required to be considered by the Special Land Acquisition Officer while awarding compensation. It is also contended by the claimants that notices were not served under Sec.12(2) of the Act and the references were filed within limitation. It is further contended that the compensation awarded by the Special Land Acquisition officer is very meagre when comparing with the fertility of the land and irrigation facilities available in these lands. He has also not considered the comparable sale instance of the adjoining land in arriving at a conclusion before awarding compensation to the claimants and he has not considered the settled principles while determining the value of the acquired land and awarded Rs.110/- per Are for irrigated land and Rs.90/- per Are for non-irrigated land as aforesaid.

4. We have heard Mr.P.V.Bhatt, learned Asstt. Government Pleader for the appellants and also gone

through the common judgment and order dated 16-3-1998 passed by the Extra Assistant Judge, Jamnagar and also other records which have been shown to us by Mr.Bhatt during the course of arguments. It is established from the said common judgment and order vide page No.12 para No.10 that on behalf of the claimants, they have examined Husein Isha Hingora at ex.15, Natha Dana Rabari at ex.16, Chhagan Gagaji at ex.18, Manusukh Premji at ex.25 and Manu Nathu at ex.26. On behalf of the otherside, State has examined Tulsibhai Trikambhai Zala, Deputy Executive Engineer, Irrigation Department at ex.29.

5. While deciding the Land Reference Cases, relying upon the settled position of law, the Reference Court has applied the multiple of 10 and deducted 50 per cent of the income towards expenditure. The Reference Court has closely scrutinised the oral evidence of the witnesses and it has been discussed at length and stated that to assess the adequate compensation, market value of the property is to be ascertained which is the best method and keeping that in mind, the Reference Court has considered the sale instance produced by the appellants which was the Sale Deed of the land in Village Varvala admeasuring 24 guntas which was sold for Rs.48,000/, i.e. Rs.2,000/-per Vigha. It was categorically stated that above Sale Deed has not been properly proved by the appellants as they did not examined either the purchaser or the seller and, therefore, he has not given any weightage to the sale instance thereby denying the claimants' claim of Rs.6,000/- per Vigha on the basis of the above Sale Deed. The Reference Court has relied upon the yield method as no expert has been examined by either of the parties which has been categorically discussed at length by closely scrutinising the oral evidence of various witnesses who were the appellants in the Land Reference cases and came to the conclusion that though various claimants have deposed that they were sowing three crops in a year and earning Rs.4,000/- to Rs.4,500/- per Vigha per year, he has not accepted the above version of the appellants after advancing the cogent reason that the claimants were already sowing only one crop in a year, i.e. seasonal crop which is supported by 7/12 Village Form. Therefore, he has come to the conclusion that average income in a year would be around Rs.600/- per Vigha for Bagayat land and Rs.400/-per Vigha for Jirayat land. He has also deducted 50 per cent towards the cost of cultivation and has applied the multiplier of 10 and has come to the conclusion that the claimants are entitled to Rs.3000/-per year for Bagayat land and Rs.2,000/- per Vigha for Jirayat land and based on that, he has awarded

compensation.

6. In our opinion, compensation awarded by the Reference Court is on the lower side and, therefore, we do not find it to be a case worth interference. All these five First Appeals are hereby dismissed.

...

radhan/